

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
GENOMETRICA RESEARCH INC., :  
:  
Plaintiff, : 11-CV-5802 (ADS)  
:  
v. :  
:  
GORBOVITSKI, et al., : 100 Federal Plaza  
:  
Defendants. : Central Islip, New York  
:  
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TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE  
BEFORE THE HONORABLE A. KATHLEEN TOMLINSON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs: PANAGIOTA BETTY TUFARIELLO, ESQ.  
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Mt. Sinai, New York 11766

For the Defendant: ARTHUR MORRISON, ESQ.  
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Proceedings recorded by electronic sound recording, transcript  
produced by transcription service

1 (Proceedings began at 12:03 p.m.)

2 (Mr. Morrison's microphone not on during proceeding.)

3 COURT CLERK: Calling Civil Case 11-5802, Genometrica  
4 Research Inc. v. Gorbovitski, et al.

5 Please state your appearance for the record.

6 MS. TUFARIELLO: Good morning, Your Honor. My name  
7 is Panagiota Betty Tufariello. I'm with Intellectual, the law  
8 offices of P.B. Tufariello P.C. located in Mt. Sinai, New  
9 York. I'm here this morning on behalf of the plaintiff  
10 Genometrica Research Inc. I'm also appearing on behalf of  
11 Hofheimer, Gartlir & Gross, my co-counsel in the case.

12 THE COURT: All right. Good morning.

13 MR. MORRISON: Good morning, Judge. My name is  
14 [inaudible] behalf of defendants.

15 THE COURT: Mr. Morrison, I can tell we didn't pick  
16 up any of that on the machinery here. So I need to get --  
17 pull that mic. You can pick it up and pull it closer to you.  
18 Make sure the green light is on at the bottom

19 MR. MORRISON: Shall I begin again?

20 THE COURT: Well, no. I'll get your appearance but  
21 unfortunately you're going to have to bring it as close as I  
22 have this to me. Otherwise the machinery won't pick up your  
23 voice.

24 MR. MORRISON: Can you hear me now?

25 THE COURT: It's not a matter of whether I can hear

1 you, sir. I can hear you without the microphone but the  
2 machinery isn't picking it up. These conferences are all  
3 digitally recorded.

4 MR. MORRISON: Can you hear me --

5 THE COURT: Mary, can you tell me?

6 THE CLERK: Yes. Speak into the microphone.

7 MR. MORRISON: Is that bottom?

8 THE CLERK: Make sure the little light is on, the  
9 little green light on.

10 THE COURT: The green light at the bottom. If it's  
11 not there's a push button. Do me a favor, push that once. I  
12 want to hear it without --

13 MR. MORRISON: The green light?

14 THE COURT: Yes. Now speak into the mic if you  
15 would. Just --

16 MR. MORRISON: Arthur Morrison.

17 THE COURT: Now hit the green light and do it again  
18 if you would. We're watching the machine because the machine  
19 tells us whether it's getting it or not. Push it again if you  
20 would. Mary, is that picking up?

21 THE CLERK: The light is on? As long as the light is  
22 on it will pick up and you're speaking into the microphone.

23 THE COURT: All right. I had you come in because I  
24 had some concerns obviously about the issues that have arisen  
25 between counsel on both sides here and we need to get it

1 resolved today. I'm going to give you both an opportunity to  
2 give me some further information but here's what I feel I'm  
3 looking at.

4 First of all, when we met back in March in the civil  
5 conference minute order under Item 2 I said that plaintiff's  
6 counsel requested permission to serve expedited discovery on a  
7 limited issue to assist the plaintiff in filing its opposition  
8 to the motion to dismiss. After hearing from both sides I  
9 granted plaintiff's request to the following extent.  
10 Plaintiff's counsel may serve a limited formal document  
11 request on Monday, March 9<sup>th</sup> requesting any records or  
12 communications relating to the three grant applications  
13 counsel discussed today purportedly made by the defendants to  
14 the NIH.

15 Defendant's counsel stated today that there was only  
16 one grant application to the NIH. Whatever information/  
17 documents the defendants have in their possession, custody or  
18 control which responds to the plaintiff's anticipated limited  
19 document demands must be served on plaintiff's counsel no  
20 later than March 27, 2012. Those responses are to be signed  
21 off by the individual defendants as well as by defendant's  
22 counsel. Defendant's counsel stated that he has already  
23 turned over to plaintiff's counsel a flash drive containing  
24 approximately 100,000 documents.

25 The next paragraph is equally important. It says

1 the following. This limited document demand is not prejudiced  
2 either party in serving regular document demands and  
3 interrogatories by the April 13, 2012 deadline set by the  
4 court today and found in the accompanying case management and  
5 scheduling order. If either side serves its demands prior to  
6 the April 13<sup>th</sup> deadline then the responses are due six weeks  
7 from the date the demands are received and I state all  
8 depositions in the case.

9 I also issued a case management order that gave the  
10 deadlines for serving not only the expedited demands which I  
11 had said were to be served on March 9<sup>th</sup> but for any other  
12 demands or discovery demands by way of document requests or  
13 interrogatories that were necessary in the case.

14 So plaintiff was perfectly within her rights to  
15 serve that second round of demands. I am somewhat concerned  
16 when I see, for example, that a second round of demands  
17 contained 200 separate document requests which seems a little  
18 excessive here. So we're going to work this out today one way  
19 or the other.

20 I don't know why you feel you're entitled to a  
21 protective order, Mr. Morrison, but I'm going to let you  
22 address that further at this point. Just because you  
23 responded to the first round for expedited discovery doesn't  
24 mean you don't have to respond to what was filed after that.

25 MR. MORRISON: If I could respond, Your Honor.

1 THE COURT: Go ahead.

2 MR. MORRISON: [Inaudible] is that my client prepared  
3 a research report [inaudible] of 2011. We provided that  
4 20,000 pages [inaudible] initial case conference. So that's  
5 [inaudible] and our responses to [inaudible] was [inaudible]  
6 documents electronically stored [inaudible]. We provided  
7 those 100,000 pages of what the universe [inaudible] research  
8 [inaudible]. So they had that on March 9<sup>th</sup> --

9 THE COURT: All right. I get that.

10 MR. MORRISON: So what happens next is that they've  
11 asked series of questions and my client is in [inaudible]  
12 universe [inaudible]. She is not here and I didn't have an  
13 opportunity to [inaudible] show them to her and say how much  
14 of that is contained in what we already gave [inaudible]. I  
15 couldn't do it. So the argument here is that they're asking  
16 us to compel. We've already provided [inaudible]. As far as  
17 [inaudible] overly broad. It's very complicated. I can't do  
18 it and I need time for her when she comes back from Russia  
19 [inaudible] she left [inaudible] and she hasn't been here  
20 [inaudible]. That's the problem.

21 THE COURT: Well, part of my concern is she may be in  
22 Russia but there's mail and there's email. There are lots of  
23 ways to communicate with your client. Why does the court have  
24 to wait until she comes back from Russia? I don't understand  
25 that.

1 MR. MORRISON: [Inaudible] not here either  
2 [inaudible] as to what happened. Your Honor's direction  
3 [inaudible] sent you [inaudible] responses. We sat with  
4 [inaudible] prepared [inaudible] and I include everything we  
5 [inaudible] and I have to do same thing again when she comes  
6 back.

7 THE COURT: No, no. Sir, I get that. You keep  
8 saying when she comes back and I still don't understand if  
9 they have copies of these requests why it's going to take  
10 until they come back for you to have communication with them  
11 to try to get this resolved.

12 MR. MORRISON: Because they're all technical  
13 questions, Your Honor. They're asking about this and  
14 [inaudible] pages [inaudible].

15 THE COURT: But these --

16 MR. MORRISON: And give answers [inaudible]  
17 connection with this case.

18 THE COURT: All right. But let me take a step back  
19 here for a minute. Let me take a step --

20 MR. MORRISON: She'll [inaudible].

21 THE COURT: Let me take a step back for a minute. Do  
22 your clients have copies of the document requests and  
23 interrogatories that were served? Did you give him a copy?

24 MR. MORRISON: I [inaudible].

25 THE COURT: So it's not as if they don't know what's

1 being asked for; correct?

2 MR. MORRISON: [inaudible]

3 THE COURT: I'm assuming you've produced these  
4 100,000 pages of documents on a CD of some sort; yes?

5 MR. MORRISON: Yes, [inaudible].

6 THE COURT: Is there some reason why your clients  
7 don't have the same CD and can't be looking through these?

8 MR. MORRISON: I think the CD is here in New York.  
9 She's overseas, Your Honor. I [inaudible] have a copy of the  
10 CD [inaudible].

11 THE COURT: Mr. Morrison, I get that but I just said  
12 to you the mails work. Why can't you handle it that way? If  
13 she doesn't have the CD why can't a copy be mailed to her? I'm  
14 sure she's got a computer where she is.

15 MR. MORRISON: I'm sure [inaudible].

16 THE COURT: There are ways to get this done.

17 MR. MORRISON: I would agree.

18 THE COURT: I'm not waiting for her to come back from  
19 wherever she is to get this process started. I'm just not  
20 going to do that. Frankly there's no reason to. The case is  
21 going to move. It needs to move. This isn't a surprise to  
22 anybody. I'm going to speak to Ms. Tufariello in a moment  
23 because I want to understand why 200 requests are necessary in  
24 a case like this but there are other ways to get this mission  
25 moving and you've got to do it.



1 MR. MORRISON: Yes, Your Honor.

2 THE COURT: Ms. Tufariello, with 100,000 documents in  
3 your possession why do you possibly need 200 requests?

4 MS. TUFARIELLO: Very fair question, Your Honor. We  
5 had an opportunity to review the documents that were actually  
6 turned over to us. First of all, it wasn't a CD. It was a  
7 hard drive. The information that is contained in the hard  
8 drive is missing about 90 percent of the documents that we're  
9 actually requesting. The 100,000 documents contain schematics  
10 of some equipment that had been tested in the process of the  
11 development of the DNA sequencer which happens to be at issue  
12 in the case. There is a couple of reports from some of the  
13 scientists but they are just that; reports. Summaries of  
14 findings out of an experiment or a series of experiments that  
15 were run in connection with the DNA sequencer.

16 Some of the things that are in fact missing vis-a-  
17 vis the DNA sequencer -- at least the DNA sequencer alone are  
18 for example email communications between each one of the  
19 individuals that are working in the lab and Ms. Vera Gorfinkel  
20 [Ph.] and Mr. Gorbovitski who are the two defendants in the  
21 case whose work is at issue with the DNA sequencer. That's  
22 not in it.

23 What else is not in it --

24 THE COURT: Wait, wait. Assuming that there are such  
25 emails.

1 MS. TUFARIELLO: There have to be, Your Honor,  
2 because --

3 THE COURT: Well, on what basis do you draw that  
4 conclusion?

5 MS. TUFARIELLO: On the basis that when work is being  
6 done at the university it doesn't happen sporadically. It  
7 happens continuously and all parties have to in fact be --  
8 have a complete understanding of what's going on at each  
9 phase. As work is progressing results are probably generated,  
10 observations are generated. Observations are generated.  
11 Meetings are being called.

12 THE COURT: I don't doubt that is the case but why  
13 are you -- you're assuming that that's all transmitted by  
14 email.

15 MS. TUFARIELLO: I'm not saying all of it but I am  
16 saying some of it.

17 Another thing that's missing, blatantly missing are  
18 the lab notebooks, and I use the term lab notebooks very  
19 broadly because from the time that -- things have changed. I  
20 have personal knowledge of how things are run at the  
21 university as a result of my own spouse having worked for the  
22 Research Foundation and in the '80s and in the '90s when they  
23 were doing research they had lab notebooks. Today perhaps  
24 they don't have lab notebooks. What they do have is computers  
25 and perhaps if they do -- if they are generating lab reports

1 they're on the computers. They're not necessarily in the lab  
2 notebook but traditionally when you're doing work for research  
3 there is a lab notebook. The lab notebook is dated day by  
4 day. The equipment that is being used at each phase of the  
5 project is recorded. The reagents are recorded. The actual  
6 experiment beginning and end is recorded. Any observations  
7 that take place in the process is recorded. Any conclusions  
8 that are arrived at as a result of observation and data  
9 collections is recorded and that -- all that information is  
10 shared at meetings and perhaps there are minutes of those  
11 meetings as well which not only --

12 THE COURT: Perhaps. Perhaps.

13 MS. TUFARIELLO: -- record what has been found but  
14 also what has -- there has to be, Your Honor. The only reason  
15 I'm saying there has to be is because the reports that are  
16 contained in the database that was turned to us on a hard  
17 drive clearly raise the inference that a lot of work occurred  
18 to get to that point. One report in particular was 90 pages.  
19 Well, we'd like to see the raw data of where these -- this  
20 information contained in the report is coming from. It's akin  
21 to having an expert witness who issues an expert's report and  
22 then the person who reads the expert's report wants to see the  
23 raw data and documents that were in fact used to generate that  
24 expert's report.

25 So it's exactly the same kind of thing. We're

1 looking for the raw data that led to some of the information  
2 that is contained on the hard drive.

3 THE COURT: All right.

4 MS. TUFARIELLO: Some of the --

5 THE COURT: What I'd like to see while you're  
6 discussing this, I want to see the demand you served in the  
7 limited capacity for the information that you needed to  
8 respond to the motion and then I'd like to see the 200 that  
9 you just -- that you've served that you're asking him to  
10 answer. Do you have those with you?

11 MS. TUFARIELLO: Unfortunately I do not, Your Honor,  
12 because I did not know what part of the entire packet of  
13 discovery that we served that Mr. Morrison was in fact  
14 objecting to.

15 The other thing that -- the other reason that I'd  
16 like to put on the table is I personally am focused on the DNA  
17 sequencer because that's my role in this litigation. However,  
18 there's a sister part to this case and that's the state causes  
19 of action in which we allege a lot of misfeasance on the part  
20 of the defendants. Misappropriation, for example, of monies,  
21 improper spending of monies, use of those monies for to  
22 achieve objectives that were totally unrelated to the business  
23 venture that brought these parties together to begin with, and  
24 a big chunk of the documents, a big chunk of the 200 requests  
25 that we're making also relate to the state causes of action.

1           It's very interesting, Your Honor, as I'm sitting  
2 here to be listening to this -- to the reasons that are being  
3 submitted to this court as an explanation for failure to  
4 respond to me. In my case when I placed the phone call the  
5 very first thing that came out of Mr. Morrison's mouth was  
6 well, what about the motion to dismiss. It was my impression  
7 that the real reason behind the delay on the part of the  
8 defendants is not so much because they need additional time or  
9 Ms. Gorbovitski is in Russia. This is the first time I'm  
10 hearing this. But rather because they were looking for that  
11 dismissal to move the case to state court and then maybe  
12 perhaps they would like to submit their documents.

13           I seriously question the basis that has been put  
14 before this court for this delay. It's not the 200 requests.  
15 If that was the case why didn't Mr. Morrison tell me this when  
16 I first communicated with him. Why didn't he say to me this  
17 is repetitive of this one, this one or that one. There are 19  
18 causes of action, Your Honor, each directed to separate  
19 issues. There are 200 requests only because you're showing me  
20 different causes.

21           Our interrogatories on the other hand are very few  
22 cognizant of the fact that we only have 25 under the rules to  
23 begin with and because we were very focused. We figured let's  
24 get our documents, let's understand, we'll take our deposition  
25 and we'll take it from there. 200 requests in the face of 19

1 causes of action, some of them related, some of them totally  
2 independent of each other makes sense. It's not that I have  
3 only one or two or three causes of action.

4 THE COURT: Wait one second. One of the things I  
5 made a note to bring up which concern me greatly, Mr.  
6 Morrison, was the communication issue here given the  
7 complaints I got in writing from plaintiff's counsel.  
8 Certainly I don't want to hear going forward that when an  
9 attorney of record here calls you and leaves a phone message  
10 or emails you or sends you a document that it's a days before  
11 you get back to that person. I don't know what your practices  
12 are but that's not going to fly here. I expect even if you're  
13 not able to talk to them or give them the information you at  
14 least give them the courtesy of a call or a response. So I  
15 don't want to hear -- I don't want to get anything in writing  
16 again saying that they've attempted to reach you and they're  
17 not getting a response. All right?

18 MR. MORRISON: [Inaudible]

19 THE COURT: You can respond to the other part.

20 MR. MORRISON: [Inaudible] and we would respond  
21 [inaudible]. There are numerous emails back and forth  
22 [inaudible] court and [inaudible].

23 THE COURT: Who is this?

24 MR. MORRISON: [Inaudible]

25 THE COURT: RAPP?

1 MR. MORRISON: [Inaudible] RAPP. So [inaudible]

2 THE COURT: Did you hear back from Mr. Rapp at all?

3 MS. TUFARIELLO: No, Your Honor. As a matter of fact  
4 at one point -- first of all, let me just point to the court  
5 before I talk about Mr. Rapp getting back to me. Mr. Rapp is  
6 still not admitted and Mr. Rapp has still not filed a notice  
7 of appearance. Out of a courtesy to Mr. Rapp and respect we  
8 have been keeping him in the loop and I have been sending him  
9 emails. In the last set of emails that I communicated both to  
10 Mr. Morrison and to -- I might add the address, the email  
11 address that is actually reflected on the docket which I  
12 believe says A. Katz, K-A-T-Z. I sent an email always to that  
13 address. I sent it to Mr. Morrison and I also sent it to Mr.  
14 Rapp. The last few emails I sent they got bounced back to me  
15 and they said to me --

16 THE COURT: All right.

17 MS. TUFARIELLO: -- they're not there.

18 THE COURT: All right. I'm telling you right now I'm  
19 not going to require any attorney in these proceedings to  
20 respond to somebody who's not counsel of record. There's no  
21 notice of appearance filed here. If he wants to participate  
22 in this case in this court he's going to have to file a notice  
23 of appearance. If he's not admitted then he can apply for pro  
24 hac vice admission but I'm not requiring counsel to respond to  
25 Professor Rapp.

1 MR. MORRISON: When she called me last time and I  
2 called her right back. So I don't think that's an issue  
3 [inaudible].

4 THE COURT: That's fine.

5 MR. MORRISON: If she calls me, I call her back.

6 THE COURT: That's fine. I'm just telling you don't  
7 rely on Professor Rapp here to be your agent to respond to her  
8 because I'm not going to tolerate that.

9 MR. MORRISON: There's no question.

10 THE COURT: All right.

11 MR. MORRISON: Can I respond to what she said?

12 THE COURT: Yes, you may.

13 MR. MORRISON: What's really happening is that  
14 [inaudible] SUNY is [inaudible] research that goes on with  
15 [inaudible] dollars and after so many years there's no  
16 [inaudible] first case [inaudible] replaced by [inaudible]  
17 amended complaint said that there were trademark violations  
18 with numerous [inaudible] causes of action [inaudible]. There  
19 are no trademarks because there's no products. [Inaudible]  
20 most recent case [inaudible] motion to dismiss [inaudible]  
21 that [inaudible] claim that is not [inaudible] that are not  
22 owned by them but owned by SUNY and as far as the [inaudible]  
23 are concerned there's no product. All [inaudible] here is not  
24 unusual is [inaudible] research. Sometimes [inaudible],  
25 sometimes there isn't. This happens to be the one case where



1 somebody enters into a license agreement with the university  
2 [inaudible] here [inaudible] say [inaudible] research on DNA  
3 sequencer. Okay, they did it.

4 My client is [inaudible] she was the lead person  
5 involved in the research. A year later, two years later,  
6 three years later. This is [inaudible]. We gave as part of  
7 the initial case disclosure [inaudible] report [inaudible].  
8 They've had that [inaudible]. Now we have a second motion to  
9 dismiss because basically they now [inaudible] representing  
10 the university [inaudible] they [inaudible] they don't need to  
11 [inaudible] that's another issue we have here. All of the  
12 items she wants, there's 200 items. She can call up  
13 [inaudible] she writes them, calls them. In fact, she was  
14 part of the university program many years ago. So she has  
15 knowledge of their procedure.

16 All -- at least 200 items she wants from us she can  
17 get from them with a phone call, we're your lawyer. So now  
18 we're in a position we have to provide the information  
19 [inaudible] I have to go back to my client. She has  
20 [inaudible] I've asked [inaudible] university and she's not  
21 here. So I [inaudible]. When I spoke to my colleague I had a  
22 cordial conversation. I don't recall saying [inaudible] what  
23 she said. I'm familiar with the [inaudible] case [inaudible]  
24 discovery is not stayed [inaudible] dismissal [inaudible]. I  
25 know [inaudible] recently [inaudible]. I put that in my

1 letter. That was not the focus of our conversation. So  
2 [inaudible] we will. I just [inaudible].

3 THE COURT: Here's what we're going to do. I allowed  
4 discovery to go forward even in the face of the motion to  
5 dismiss with the expectation that it would be reasonable  
6 discovery at least until find out if all these claims survive  
7 the motion to dismiss. I find 200 document demands excessive.  
8 I'm sorry, Counsel, but I find them excessive.

9 What I'm going to have you do for now is you're  
10 going to cut the list down in half. You'll take whatever time  
11 you need to do that. We'll talk about that in a moment. You  
12 request what is absolutely essential for you to have at this  
13 point. Once the motion to dismiss is determined if all the  
14 causes of action go forward I'm going to let you come back  
15 here and you can convince me, whatever you need to convince me  
16 of of the additional materials that you need to support your  
17 claims and I'll be happy to hear your application and I'll  
18 give Mr. Morrison a chance to respond. But for now I'm  
19 directing you cut them in half and serve them on Mr. Morrison.

20 And, Mr. Morrison, we're going to set a time for you  
21 to respond and I'm telling you now as I've already said the  
22 fact that your client is out of the country doesn't absolve  
23 the response to these demands.

24 MR. MORRISON: [Inaudible]

25 THE COURT: How long do you need?

1 MS. TUFARIELLO: I understand Your Honor's position  
2 that you feel that these 200 requests are excessive. However,  
3 I know and maybe I misunderstood a point of clarification.  
4 Your Honor indicated that I need to reduce them to 100 for  
5 what I believe I need at this point.

6 THE COURT: I'm telling you to take the 100 most  
7 essential ones.

8 MS. TUFARIELLO: The problem is I don't know what is  
9 the most essential right now. That's my concern. When we  
10 prepared the request for documents and it was a collaborative  
11 effort both between myself and Hofheimer Gartlir & Gross we  
12 worked very hard in getting them down to 200. They were  
13 originally 500 of them I must say. The reason for this is  
14 because there are 19 causes of action and each part of the 200  
15 is directed to some -- some there's overlap and some there  
16 isn't. For me to -- for me to come back and say to you I need  
17 one week or two weeks or how much time I need, I have to go  
18 back and discuss it with Hofheimer Gartlir & Gross.

19 THE COURT: That's fine. I'm willing to give you  
20 whatever time you tell me it's going to take. I understand  
21 that you -- you mentioned to me before there are 19 causes of  
22 action. I get that. We're doing this in the context of a  
23 pending motion to dismiss and I don't know if all 19 are going  
24 to survive or not. Frankly if there is some overlap you're  
25 going to have to figure out what you need. What's essential

1 right now. I'm not prejudicing your rights to come back here  
2 in the future if all 19 survive and we're moving forward.  
3 Then you're going to make the case to me as to why you need  
4 the additional documents. Look, I'm perfectly open to looking  
5 at that. It may be that you need another 100 after that. You  
6 may need 150 after that. I don't know what's going to happen  
7 here but I'm telling you for now at this stage of the  
8 proceeding 200 is excessive. Cut it in half.

9 MS. TUFARIELLO: Can I have two weeks only because  
10 next week is the 4<sup>th</sup> of July?

11 THE COURT: That's fine.

12 MS. TUFARIELLO: I don't know what vacation schedules  
13 I have going forward. I know that I personally have to take a  
14 trip up to Massachusetts for my daughter's college. So --

15 THE COURT: I'm going to give you whatever time you  
16 request.

17 MS. TUFARIELLO: July 15 I guess.

18 THE COURT: All right.

19 MS. TUFARIELLO: Two weeks from now approximately.

20 THE COURT: All right. Friday is the 16<sup>th</sup>. So you've  
21 got until the 16<sup>th</sup>.

22 MS. TUFARIELLO: I appreciate it.

23 THE COURT: You'll serve them by July 16<sup>th</sup>.

24 MS. TUFARIELLO: If I serve them sooner?

25 THE COURT: If you serve them sooner that's fine.

1 MS. TUFARIELLO: Okay.

2 THE COURT: I'm giving until August 20<sup>th</sup>, Mr.  
3 Morrison, to get the responses done and the documents served.  
4 All right?

5 MR. MORRISON: Very good.

6 MS. TUFARIELLO: Irrespective of when I serve it?

7 THE COURT: Irrespective of when you serve it. I  
8 don't want anybody back here telling me things weren't done on  
9 time. You've got this stretch. You're getting a bigger  
10 stretch built in because of what I'm making Ms. Tufariello do  
11 now to comply with my order. So you need to communicate with  
12 your clients and as I said if they're not here, they're not.  
13 They're defendants in a pending litigation. They've got to  
14 respond.

15 MR. MORRISON: I will do that. Can I say one more  
16 thing?

17 THE COURT: Go ahead.

18 MR. MORRISON: [Inaudible] industry [inaudible] there  
19 are at this university [inaudible] search [inaudible] side by  
20 side [inaudible] research [inaudible] is that [inaudible] no  
21 development of [inaudible].

22 THE COURT: You told me that the first day you were  
23 here. I recall this. Go ahead.

24 MR. MORRISON: [Inaudible] that was [inaudible] world  
25 [inaudible] colleague [inaudible] is that [inaudible] there

1 and [inaudible] so [inaudible] out there [inaudible] beyond  
2 this stage of research [inaudible] marketplace [inaudible]  
3 beyond [inaudible]. They just didn't [inaudible] development  
4 stage [inaudible] involved in the case [inaudible] after they  
5 put their report in in October [inaudible] federal court  
6 [inaudible] didn't happen in this case. I'm happy to comply.  
7 I'm happy to do it.

8 THE COURT: And I have no doubt that you brought this  
9 up to Judge Spatt in the motion to dismiss; right?

10 MR. MORRISON: I believe [inaudible].

11 THE COURT: So --

12 MR. MORRISON: But I just wanted you to understand  
13 that we're not hiding anything [inaudible] question of  
14 [inaudible] federal system.

15 THE COURT: I get your argument.

16 MR. MORRISON: [Inaudible] Are we excused, Your  
17 Honor?

18 THE COURT: In about two seconds, yes. I'm going to  
19 put an order in summarizing what we talked about. You'll get  
20 the amended demand served by the 16<sup>th</sup> at the latest and you're  
21 going to respond by August 20<sup>th</sup>. Whatever you have to do to  
22 lasso your clients you're going to do. Everything else I've  
23 said previously I'm holding depositions in abeyance until such  
24 time as the motion is decided and that's where we are.

25 As I said, my ruling today is without prejudice to

1 you to come back in the future and show me why the rest of  
2 those document requests are needed.

3 MR. MORRISON: [Inaudible] reserve our rights to  
4 [inaudible].

5 THE COURT: Oppose? Absolutely. I'm not prejudicing  
6 anybody here. Not yet anyway.

7 MS. TUFARIELLO: Your Honor, one more thing if I may,  
8 please.

9 THE COURT: Yes.

10 MS. TUFARIELLO: It's true the requests for documents  
11 are 200 and we will comply with the court's order. The  
12 interrogatories however are not in any way or measure as --

13 THE COURT: There are 15 of them; right?

14 MS. TUFARIELLO: I'm sorry?

15 THE COURT: There are 15.

16 MS. TUFARIELLO: Yes.

17 THE COURT: So you're under the limit which means  
18 they have to be answered.

19 MS. TUFARIELLO: Now, can we get an answer on those a  
20 little sooner?

21 THE COURT: I'm going to give him until August 20<sup>th</sup>  
22 with this proviso. If these two things are not addressed as  
23 they should be addressed by August 20<sup>th</sup> I'm warning you, Mr.  
24 Morrison, I'm going to impose sanctions.

25 MR. MORRISON: That would [inaudible].

1 MS. TUFARIELLO: I don't think so, Your Honor. I  
2 have no responses.

3 MR. MORRISON: We [inaudible] same time.

4 THE COURT: Well, it sounds to me --

5 MR. MORRISON: [Inaudible]

6 THE COURT: It sounds to me that before you leave the  
7 courthouse today and there's a room right back -- two of them  
8 behind the courtroom to talk to each other. You say you  
9 served them. She says she doesn't have them. You need to  
10 talk to each other.

11 MR. MORRISON: [Inaudible] motion practice  
12 [inaudible] included [inaudible].

13 MS. TUFARIELLO: I believe my colleague is reference  
14 -- is referring to the initial automatic disclosures which  
15 were in fact provided to us on March 9<sup>th</sup>. However, in response  
16 to our April 13 set of interrogatories that were submitted to  
17 Mr. Morrison I have not received any response to those  
18 interrogatories either.

19 MR. MORRISON: [Inaudible] those [inaudible] same  
20 time as the [inaudible].

21 THE COURT: All right.

22 MR. MORRISON: [Inaudible]

23 THE COURT: Talk to each other.

24 MS. TUFARIELLO: I couldn't have had them since March  
25 26<sup>th</sup>, Your Honor.



1 THE COURT: Because you didn't serve them.

2 MS. TUFARIELLO: I served them on April 13<sup>th</sup>.

3 THE COURT: Right. Do you understand that, Mr.  
4 Morrison?

5 MR. MORRISON: Yes.

6 THE COURT: Talk to each other. If this doesn't get  
7 resolved then you're free to make an application.

8 MS. TUFARIELLO: Yes, Your Honor.

9 MR. MORRISON: [Inaudible]

10 THE COURT: By August 20<sup>th</sup>. You're telling me that  
11 you served them already. So it should be a matter of you just  
12 copying them.

13 Have a good weekend.

14 MS. TUFARIELLO: Thank you, Your Honor.

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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5 \_\_\_\_\_  
6 Shari Riemer

7 Dated: June 28, 2012  
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